	Kimmel & Silverman, P.C.									
1	30 East Butler Pike									
2	Ambler, PA 19002 Telephone: (215) 540-8888 Attorney of Record: Amy Bennecoff Ginsburg (AB0891)									
3										
	Attorney for Plaintiff									
4	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY									
5										
6										
7	BRANDON MCCARTY,	Case No.:								
8	Plaintiff,	i •								
9	i iaintiii,	)								
	v. )	COMPLAINT AND DEMAND FOR JURY TRIAL								
10	BANK OF AMERICA CORPORATION,	JURI IRIAL								
11										
12	Defendant.	(Unlawful Debt Collections Practices)								
13	)	ı								
13		,								
14	<u>COMPLAINT</u>									
15	BRANDON MCCARTY ("Plaintiff"), by and through his attorneys, Kimmel &									
16	Silverman, P.C., alleges the following again	nst BANK OF AMERICA CORPORATION								
17	(4D C 1 42)									
18	("Defendant"):									
19	INTROD	UCTION								
20	1. Plaintiff's Complaint is based	on Defendant's repeated violations of the								
21	Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. ("TCPA").									
22	JURISDICTION AND VENUE									
	2 This Court's jurisdiction origan	under 15 U.S.C. & 1602k(d), which states that								
23	2. This Court's jurisdiction arises under 15 U.S.C. § 1692k(d), which states that									
24	such actions may be brought and heard before "any appropriate United States district court									
25	without regard to the amount in controversy," and 28 U.S.C. § 1331, which grants this Court									

original jurisdiction of all civil actions arising under the laws of the United States. <u>See Mims v.</u> Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

- 3. Defendant regularly conducts business in the State of New Jersey therefore personal jurisdiction is established.
  - 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

### **PARTIES**

- 5. Plaintiff is a natural person residing in Marlton, New Jersey 08053.
- 6. Plaintiff is a "person" as that term is defined by 47 U.S.C. §153(39).
- 7. Defendant is a corporation with its principal place of business located at Bank of America Corporation Center, Suite 220, Charlotte, NC 28255.
  - 8. Defendant is a "person" as that term is defined by 47 U.S.C. §153(39).
- 9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

#### **FACTUAL ALLEGATIONS**

- 10. Plaintiff has a cellular telephone.
- 11. Plaintiff has only used this phone as a cellular telephone.
- 12. Beginning in or around November 2017 and continuing through in or December 2017, Defendant placed repeated harassing telephone calls to Plaintiff's cellular telephone, typically calling Plaintiff multiple times each day.
- 13. During this time Defendant contacted Plaintiff using an automated telephone dialing system and/or pre-recorded voice.

	14.	Plaintiff	knew	that	Defendant	was	contacting	Plaintiff	using	an	automated
telephone dialing system and/or pre-recorded voice as calls began with a pre-recorded voice or											
messa	ge befor	e calls we	ere tran	sferre	ed to a live a	gent.					

- 15. Upon initial communication with Plaintiff in or around November 2017, Plaintiff requested that Defendant stop calling.
- 16. This was Plaintiff's method of revoking all prior consent for Defendant to call him on his cellular telephone.
- 17. Once Defendant was told the calls were unwanted and to stop, there was no lawful purpose to making further calls, nor was there any good faith reason to place calls.
- 18. However, Defendant ignored Plaintiff's revocation of consent as well as repeated instructions to stop calling and instead continued to call him.
- 19. Upon information and belief, Defendant conducts business in a manner which violates the Telephone Consumer Protection Act.

# COUNT I DEFENDANT VIOLATED THE TCPA

- 20. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.
- 21. Defendant initiated automated calls to Plaintiff using an automatic telephone dialing system.
  - 22. Defendant's calls to Plaintiff were not made for "emergency purposes."
- 23. Defendant's calls to Plaintiff, on and after late November 2017, were not made with Plaintiff's prior express consent.

- 24. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.
- 25. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.
- 26. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and treble damages.

WHEREFORE, Plaintiff, BRANDON MCCARTY, respectfully prays for judgment as follows:

- a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
   15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs, pursuant to 15 U.S.C. § 1693k(a)(3);
- d. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
- e. Statutory damages of \$500.00 per violative telephone call ursuant to 47 U.S.C. § 227(b)(3)(B);
- f. Treble damages of \$1,500.00 per violative telephone call pursuant to 47
   U.S.C. §227(b)(3);
- g. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and

h. Any other relief deemed appropriate by this Honorable Court.

## **DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, BRANDON MCCARTY, demands a jury trial in this case.

## **CERTIFICATION PURSUANT TO L.CIV.R.11.2**

I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not subject to any other action pending in any court, arbitration or administrative proceeding.

Respectfully submitted,

Dated: 1/11/19 /s/Amy L. Bennecoff Ginsburg

Amy L. Bennecoff Ginsburg Kimmel & Silverman, P.C. 30 East Butler Pike

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